IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 257 OF 2006
IN
REVIEW PETITION NO. 13 OF 2006
IN
NOTICE OF MOTION NO. 560 OF 2006
AND
NOTICE OF MOTION NO. 653 OF 2006
IN
SUIT NO. 497 OF 2006

Rekhadevi V.Mohatta ... Appellant

Versus

Shobhadevi A. Mohatta and ors. .....Respondents

Mr. N.G. Thakkar, Senior Advocate, with Mr. Kevic Setalwad, instructed by M/s. Thakordas & Madgavkar, for the appellant.

Mr. Shailesh Shah for respondent Nos. 2 and 3.

CORAM: **KSHITIJ R. VYAS, C.J.** &
ABHAY S. OKA, J.

DATE: **JULY 03, 2006**.

P.C.

This appeal is directed against the order dated 27th March, 2006, passed by the learned single Judge in Review Petition No. 13 of 2006. By the said order, the learned single Judge refused to review his earlier order dated 2nd March, 2006, on the ground that the said order was passed by consent and, therefore, the question of changing the

name of the Arbitrator does not arise. It may be stated that by order dated 2nd March, 2006, the learned single Judge, by consent, appointed Hon'ble Shri S.N. Variava (retired Judge of the Supreme Court) to resolve all the disputes and differences raised in the suit as well as arising out of the partnership deed between the original plaintiff and defendant Nos. 1 to 8. Learned counsel appearing for the appellant has raised two submissions that no sufficient time was given to consult his clients and the order is contrary to the agreement between the parties.

2. Considering the fact that the appellant having failed to raise the aforesaid grounds before the learned single Judge and allowed the learned single Judge to pass orders, it is neither reasonable nor proper to make grievance about appointment of Arbitrator. In our opinion, no interference is called for in the matter as the Counsel have consented to pass order. The learned single Judge is, therefore, justified in rejecting the review application.

3. The learned Counsel for the appellant has invited our attention to a decision of the Apex Court in the case of *P. Anand*

Gajapati Raju and ors. vs. *P.V.G. Raju (died) and others*, AIR 2000 SC 1886. We have gone through the said judgment.

4. The facts of that case are quite different from the facts of the present case. In the said decision, the order was not passed by consent. In the light of the same, it was held that it was obligatory for the Court to refer the disputes to the arbitrator in terms of the agreement. There being no substance in the appeal, the same is dismissed.

4. In view of the dismissal of the main appeal, this Motion has become infructuous and is accordingly dismissed.

CHIEF JUSTICE

ABHAY S. OKA, J.